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November 5, 1997

F. Andrew Turley, Esquire  
Office of General Counsel  
Federal Election Commission  
999 East Street  
Washington, DC 20463

RE: MUR-4674 -- New Jersey Republican State Committee;  
H. George Buckwald, as Treasurer (Respondents)

Dear Mr. Turley:

Respondents, New Jersey Republican State Committee and H. George Buckwald ("RSC"), submit this response to the Complaint which seeks an investigation of alleged violations by RSC of ratios used to allocate administrative and generic voter drive expenses for shared federal and nonfederal activities in 1996. For the reasons set forth below, RSC respectfully requests that the Complaint be dismissed since the allegations lack merit. In the alternative, the facts support RSC's good faith in its submissions to the Federal Election Commission (the "Commission") and, in such instances, the Commission has allowed a transfer of balances within 30 days to reflect the proper ratio.

**I. COUNTER-STATEMENT OF FACTS**

In preparing Schedule H-1 for the 1996 election, RSC took one nonfederal allocation point for each of the offices of State Senate and State Assemblyperson. According to the Certification of Charlene Hooker, submitted herewith, the RSC submitted this

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Schedule H-1 with its letter requesting that the Federal Election Commission contact it in the event of any questions regarding the allocation framework. In fact, in 1996, two vacancies occurred which impacted the formula. There was a vacancy in the Office of State Assembly for the 21st Legislative District had occurred due to the death of Assemblyman Monroe Lustbader. An election to fill this vacancy was held in November, 1996. Another vacancy occurred in the Office of State Senator for the 8th Legislative District due to the untimely death of Senator Haines. Since the vacancy occurred within 54 days of the November election, the seat was filled by appointment in accordance with N.J.S.A. 19:27-11.1 and 11.2.

At the time of allocation (January 24, 1996), Charlene Hooker, Director of Operations of RSC corresponded with Kenneth A. Davis of the Commission and requested that he review and comment on the allocation methodology. To date, Mr. Davis has not responded. See Certification of Charlene Hooker.

**II. LEGAL ARGUMENT**

The gravamen of the Complaint hinges on the interpretation of points assessed to races for non-federal offices for allocation purposes under 11 C.F.R. §106.5(d)(1)(ii). In pertinent part, this regulation states:

The committee shall count the non-federal offices of Governor, State Senator, and State Representative, if expected on the ballot in

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the next general election, as one non-federal office each.

The Complainant has incorrectly cited this to support the proposition that an allocation point can be allowed for the office of State Senator only if all the offices are up for election.

This is not so. The entitlement to a non-federal point is not predicated upon vacancies in all of the relevant legislative offices. One vacancy in one office at a specific legislative level is sufficient.

Pursuant to 11 C.F.R. §106.5(a)(1), political committees that maintain separate accounts for federal and non-federal activity must comply with the applicable allocation rules. Because certain party committees benefit both state and federal candidates, allocating expenditures ensures that the benefit received by candidates is reported accurately and paid with contributions that conform to federal law.

The purpose of the allocation regulations is to ensure that money that does not meet FECA restrictions is not used to influence Federal elections. AO-1991-15 at p.2.

The specific direction in this area is as follows:

In calculating a ballot composition ratio, a state or local party committee shall count the federal offices of President, United States Senator, and United States Representative, if expected on the ballot in the next general election, as one federal office each. The committee shall count the non-federal offices of Governor, State Senator, and State Representative, if expected on the ballot in

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the next general election, as one non-federal  
office each.

AO-1993-17 at p.2.

In the case at bar, RSC was entitled to allocation of one point for the 8th District Senate seat to replace deceased Senator Haines and one point for the 21st District Assembly set to please the deceased Assemblyman Lustbader.

Clearly, the vacancies left by both State Senator Haines and Assemblyman Lustbader entitled RSC to take an additional point for each office. The Commission's prior interpretations of the purpose of 11 C.F.R. §601.5 allow a wider discretionary latitude in this regard.

In AO-1991-25, the Commission reviewed a point allocation under 11 C.F.R. §106.5(d)(1)(i) for a special election held in conjunction with the November, 1991 general election. The death of United States Senator Heinz caused a vacancy in the U.S. Senate seat from Pennsylvania and the point allocation was addressed by the Commission:

The vacancy for U.S. Senate in Pennsylvania, however, did not exist until April 4, 1991; and it is scheduled to be filled before the November, 1992 general election. It is only the period between April 4 and the date of the special election held to fill this vacancy that will be affected by a change in the ballot composition ratio.

AO-1991-25 at p.2. The Commission then concluded that the State Committee's should add an additional Federal point to the ballot

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composition ratio "for that period only, making the Federal portion 44%." Ibid.

This issue was also addressed by the Commission in A.O.-1991-6 when due to special circumstances both California United States Senate seats were up for election in 1992. In the usual course of events, only one United States seat at a time would be up for election. Addressing the special circumstance,

The Commission therefore conclude[d] that CDP must include a point for each U.S. Senate seat on the November 1992 general election ballot in its calculation of the Federal portion of its ballot composition ratio.

AO-1991-6 at p.4.

III. CONCLUSION

Respondents respectfully request that the Commission dismiss this Complaint with prejudice for two reasons: first, the ballot composition ratio was calculated correctly; and secondly, even if this allocation was in error, RSC had given notice to a representative of the Commission and requested that he respond if there were any problems. In instances where the miscalculation was made in good faith, the Commission has allowed a transfer of balances between accounts within 30 days to reflect the proper ratio. See A.O.-1991-15, A.O.-1983-22.

Dated: November 5, 1997

BY: Peter G. Sheridan / dhl  
Peter G. Sheridan

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New Jersey Republican State Committee,  
H. George Buckwald.

PUBLIC INTEREST LAW CENTER OF  
NEW JERSEY,

Complainant,

v.

NEW JERSEY REPUBLICAN STATE  
COMMITTEE, H. GEORGE BUCKWALD,

Respondents.

FEDERAL ELECTION COMMISSION

MUR-4674

**CERTIFICATION OF  
CHARLENE HOOKER**

I, CHARLENE HOOKER, of full age, hereby certify:

1. I am employed by the New Jersey Republican State Committee ("RSC") as Director of Operations. As such, I have knowledge of the facts set forth herein.

2. Pursuant to 11 C.F.R. §106.5(d)(ii) RSC prepares a Schedule H-1, a copy of the 1996 Schedule H-1 is annexed hereto as Exhibit A.

3. This Schedule was submitted to FEC as part of the RSC's Quarterly Report that was due to the FEC on April 15, 1996.

4. Additionally, I sent a letter dated January 24, 1996, a copy of which is annexed hereto as Exhibit B. In this letter, I requested that the RSC be contacted if there were any questions regarding this Schedule.

5. I never received a written response to this letter; however, on March 18, 1996, I spoke with Debbie Manzano at the FEC who confirmed that we could take the "extra" point for deceased Senator Haines which resulted in the "special" election. She confirmed that we were using the correct allocation.

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false. I am subject to punishment.

Date: 11/3/97

Charlene Hooker  
Charlene Hooker

**EXHIBIT A**



SCHEDULE H1

METHOD OF ALLOCATION FOR SHARED FEDERAL  
AND NON-FEDERAL ADMINISTRATIVE EXPENSES  
AND GENERIC VOTER DRIVE COSTS

NAME OF COMMITTEE

New Jersey Republican State Committee

NATIONAL PARTY COMMITTEES

FIXED FEDERAL PERCENTAGE (CHECK THE APPROPRIATE LINE AND ENTER % IN BOX) .. 0.00%

   PRESIDENTIAL YEAR (65%)

   ALL OTHER YEARS (60%)

HOUSE AND SENATE PARTY CAMPAIGN COMMITTEES

   MINIMUM FEDERAL PERCENTAGE (65%) (IF CHECKED, ENTER 65% IN BOX TO RIGHT) 0.00%

OR

   FUNDS EXPENDED:

   ESTIMATED DIRECT CANDIDATE SUPPORT - FEDERAL ..... 0.00%

   ESTIMATED DIRECT CANDIDATE SUPPORT - NON-FEDERAL .... \$ 0.00

ADJUSTMENTS TO FUNDS EXPENDED:

   ACTUAL DIRECT CANDIDATE SUPPORT - FEDERAL ..... \$ 0.00 .. 0.00%

   ACTUAL DIRECT CANDIDATE SUPPORT - NON-FEDERAL ..... \$ 0.00

NOTE: FUNDS EXPENDED MUST BE USED IF THE FEDERAL PROPORTION IS GREATER 65% IN ANY YEAR.

SEPARATE SEGREGATED FUNDS AND NON-CONNECTED COMMITTEES

FUNDS EXPENDED:

   ESTIMATED DIRECT CANDIDATE SUPPORT - FEDERAL ..... 0.00%

   ESTIMATED DIRECT CANDIDATE SUPPORT - NON-FEDERAL .... 0.00%

ADJUSTMENTS TO FUNDS EXPENDED:

   ACTUAL DIRECT CANDIDATE SUPPORT - FEDERAL ..... \$ 0.00 .. 0.00%

   ACTUAL DIRECT CANDIDATE SUPPORT - NON-FEDERAL ..... \$ 0.00

STATE AND LOCAL PARTY COMMITTEES

BALLOT COMPOSITION

CHECK ALL OFFICES APPEARING ON THE NEXT GENERAL ELECTION BALLOT:

1. PRESIDENT.....	(1 POINT).....	1
2. U.S. SENATE.....	(1 POINT).....	1
3. U.S. CONGRESS.....	(1 POINT).....	1
4. SUBTOTAL - FEDERAL (ADD 1, 2 AND 3).....		3
5. GOVERNOR.....	(1 POINT).....	0
6. OTHER STATEWIDE OFFICE(S).....	(1 OR 2 POINTS)...	0
7. STATE SENATE.....	(1 POINT).....	1
8. STATE REPRESENTATIVE.....	(1 POINT).....	1
9. LOCAL CANDIDATES.....	(1 OR 2 POINTS)...	1
9A. EXTRA NON-FEDERAL POINT.....	(1 POINT).....	1
10. SUBTOTAL - NON-FEDERAL (ADD 5, 6, 7, 8, AND 9).....		4
11. TOTAL POINTS (LINE 4 PLUS LINE 10).....		7

FEDERAL ALLOCATION=LINE 4 DIVIDED BY LINE 11..... 42.86%

**EXHIBIT B**



*Filed  
1/24/96  
@ 4.25*

VIA FAX

January 24, 1996

Federal Election Commission  
Kenneth A. Davis, Jr.  
Reports Analyst  
999 E Street NW  
Washington, D.C. 20463

Dear Mr. Davis:

I am faxing for your review a copy of our Schedule H1-Method of Allocation for Shared Federal and Non-Federal Expenses.

Our concern is that we comply with FEC regulations by using the years 1995 and 1996 for this allocation.

Could you please review this schedule and the allocations and confirm that we are indeed using the correct years.

Thank you for your assistance in this matter.

Sincerely

*Charlene Hooker*  
Charlene Hooker  
Director of Operations